

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Rothman
MOUNTAIN VIEW
MOBILE
HOME ESTATES

SFUND RECORDS CTR
32648

UNITED STATES OF AMERICA, and

Plaintiff,

THE STATE OF ARIZONA,

Intervenor,

v.

CIV 83-309 GLO RMB

METATE ASBESTOS CORPORATION; NEAL,
CAPPER, NEAL LAND & DEVELOPMENT
CORPORATION; JACK L. NEAL; GERALDINE
F. NEAL; EFFIE D. NEAL; DELLON R. CAPPER;
JACQUELINE F. CAPPER; JAQUAYS MINING
CORPORATION; D.W. JAQUAYS MINING &
CONTRACTORS EQUIPMENT CO.,

Defendants.

CONSENT DECREE

Whereas, the United States of America ("U.S."), on behalf of the Administrator of the Environmental Protection Agency ("EPA") filed a complaint in this action on May 13, 1983, under sections 106 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. §9606, section 7003 of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. §6973, and Section 303 of the Clean Air Act ("CAA"), 42 U.S.C. §7603 to remedy an imminent and substantial endangerment to human health, welfare or the environment at the Mountain View Mobile Home Estates Subdivision ("the Subdivision"), and sections 104 and 107 of CERCLA, 42 U.S.C.

Rothman

§§9604, 9607 to recover the costs expended in investigating and abating the endangerment at the Subdivision; and

Whereas, the State of Arizona (hereinafter referred to as "the State," or, together with the United States as "Plaintiffs") through the Arizona Department of Health Services, ("ADHS") has been admitted as an intervenor in this action by Order of this Court dated January 31, 1985; and

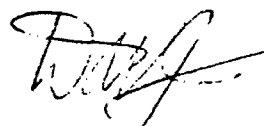
Whereas, the Complaint alleges, inter alia, that Jaquays Mining Corp. ("Jaquays") has caused or contributed to the endangerment to human health, welfare or the environment arising out of the storage, treatment, handling, disposal, transportation, presence, emission, release or threatened release of solid wastes, hazardous wastes, hazardous substances, and/or air pollutants at the Subdivision: Specifically, the Complaint alleges that asbestos fibers from asbestos tailings piles on the Jaquays property have been and continue to be emitted into the ambient air and that some of these fibers travel to and through the Subdivision; and

Whereas, the Plaintiffs and Jaquays, parties to this civil action, have consented to the entry of this Consent Decree ("Decree"),

Therefore, it is Ordered, Adjudged and Decreed:

1. JURISDICTION

The Court has jurisdiction over the parties and the subject matter of this decree.

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2. DEFINITIONS

A. Jaquays Site, or the Site: The real property located approximately one thousand (1000) feet east of the Subdivision near Globe, Arizona and described in Exhibit A to this Decree.

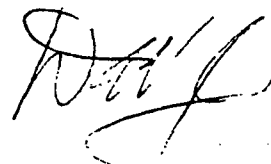
B. Asbestos Tailings Piles: Those areas consisting of piles of asbestos tailings as shown and delineated "east Pile B" and "west Pile C" on a plat of the Jaquays site prepared by Hansen Bunker and Hansen, said plat consisting of three parts denominated sheets C-1, C-2, and C-3, and being dated December 13, 1984, and being attached to this Decree as Exhibit C and incorporated into this Decree by reference; and such other areas of the Jaquays site immediately surrounding the said east B and west C piles and contiguous thereto onto which asbestos tailings have migrated or spread.

C. The Work: the requirements of the Technical Appendix to this Decree, excluding the maintenance requirements contained therein.

D. Effective date of this Decree: the date on which the Decree is entered after signature by the Court.

3. PURPOSE OF THIS DECREE

The purpose of this Decree is to protect the public health, welfare and the environment from alleged releases and threatened releases of allegedly hazardous substances by requiring that Jaquays bury and provide a permanent cover over the Asbestos Tailings Piles and other identifiable sources of asbestos fibers at the

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Jaquays Site adjacent to the Subdivision in order to prevent asbestos fibers from becoming airborne; to assure adequate maintenance of the cover; to prevent future disturbance of the asbestos waste; and to assure compliance with all existing federal and state statutes and regulations relating to asbestos as a hazardous air pollutant.

4. PARTIES BOUND

A. This Decree shall apply to and be binding upon the parties, their officers, employees, agents, successors and assigns.

B. The covenants of Jaquays will be appurtenant to and will run with the land represented by the Site, and successors in ownership of the Site will be deemed parties hereto and will be bound by the terms of this Decree. Successors in ownership shall assume all liabilities and responsibilities of Jaquays under this Decree.

5. DESCRIPTION OF JAQUAYS OPERATIONS

The Jaquays facility is located approximately one thousand (1000) feet east of the Subdivision on Route 70, and has been in operation since 1960 as an asbestos milling operation. The facility has operated only intermittently for the last three (3) years and is currently not in operation.

As part of the production process, asbestos tailings were transported from the mill building and placed in piles behind the building. Presently there are tailings piles as well as other areas containing asbestos wastes, including the access road, railroad siding and other areas of the Site.

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The legal description of the Jaquays Site is attached as Exhibit A to this Decree.

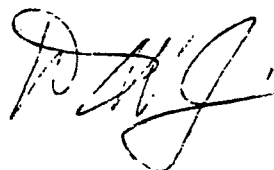
6. IMPLEMENTATION CLAUSE

Jaquays shall fully perform or cause to be performed all of the requirements of the Technical Appendix to this Decree including the maintenance requirements contained therein and in Paragraph 9 (Maintenance) for as long as Jaquays owns or has an interest in the Site. Jaquays shall commence the Work no later than sixty (60) days from the effective date of this Decree. Jaquays shall complete the Work within ninety (90) days of commencement of the Work and shall fully fund all capital expenditures and any other expenses necessary to develop, implement, and maintain any remedial activities necessary to comply with this Decree.

The Technical Appendix and the Exhibits to this Decree are an integral part of this Decree and are incorporated into this Decree by reference. Jaquays shall provide a copy of this Decree to each contractor and subcontractor retained to perform any work required by the terms of this Decree.

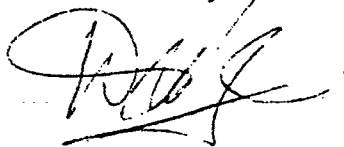
7. SITE SECURITY

The Jaquays Site is currently surrounded by a fence. Within five (5) calendar days after the effective date of this Decree, Jaquays shall inspect the fence and make repairs as needed to assure that access to the Site by the general public is restricted. Jaquays shall maintain the fence in good repair at all times during the implementation of the Work.

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8. COMPLETION OF WORK

Within five (5) calendar days of the completion of the Work, Jaquays shall notify in writing the United States and the State of the last day on which Jaquays performed the Work at the Site in fulfillment of the Technical Appendix. Jaquays will provide the United States with an "as-built" drawing by a registered engineer/land surveyor showing the actual location of the completed burial pit. The United States and the State shall review the Work and indicate in writing their agreement or disagreement as to its satisfactory completion within thirty (30) calendar days of receipt of the notification. If neither the United States nor the State notifies Jaquays in writing within the thirty (30) day period of any disagreement concerning the completeness of the Work performed, it shall be deemed that such Work has been completed in full compliance with this Decree, and the date in Jaquays' notification shall be deemed the "Completion Date." If either the United States or the State believes that the Work has not been completed in accordance with this Decree, such party shall notify Jaquays in writing as to what should be done to complete the Work, and propose a schedule for completion. If Jaquays does not object to the corrective measures, if any, proposed by the United States or the State within twenty (20) calendar days after receiving written notice, Jaquays shall expeditiously undertake and complete such measures in accordance with the proposed schedule of completion. If Jaquays objects to any proposed corrective measures, it shall notify the United States or the State, as appropriate, within twenty (20) calendar days after receiving written notice, of its objections and the

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reasons therefor. In the event that the parties cannot resolve any dispute over the Work, the Completion Date will be established pursuant to the procedures in Paragraph 19 (Dispute Resolution).

9. MAINTENANCE

For as long as Jaquays owns or has an interest in or control of the Site, Jaquays shall undertake corrective or maintenance actions ("Maintenance Actions") necessary to provide and maintain a permanent cover for the areas of the Site indicated in the Technical Appendix, and to assure that the cover continues to comply with the maintenance standards contained in the Technical Appendix.

10. SITE ACTIVITY

Except for actions set forth in the Technical Appendix and for Maintenance Actions, Jaquays will not take any of the following actions unless Jaquays has provided the United States and the State with written notice thirty (30) calendar days in advance of such action:

A. Any action which may disturb the integrity of the cover.

B. Any action to convert or demolish the mill building, or to remove from the building any machinery, vehicles or fixtures. Written notice under this subparagraph B will include, at a minimum, a plan for the proper decontamination or disposal of any property converted, demolished, disposed of or sold.

C. Any action to accumulate or store additional asbestos-containing materials on the Site.

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The United States and the State shall review the action proposed in the notice and indicate their approval or disapproval within thirty (30) calendar days of receipt of the notice. If either the United States or the State disapproves of the proposed action in writing, the parties will have thirty (30) calendar days from the date of the disapproval to resolve the matter. In the event that the parties cannot resolve the matter, the procedures in Paragraph 19 (Dispute Resolution) will apply.

11. RECORD NOTICE AND CONVEYANCE OF SITE

A. Until the Work is deemed complete in accordance with Paragraph 8 (Completion of Work), Jaquays shall not enter into any conveyance of the Site, or the machinery, vehicles or fixtures currently on the Site.

B. Within fifteen (15) days of the effective date of this Decree, Jaquays shall record a certified copy of this Decree with the Gila County, Arizona, Records Office.

C. No conveyance of the Site shall be consummated by Jaquays unless such conveyance contains adequate and complete provisions for continued compliance with the maintenance provisions of the Technical Appendix and this Decree.

D. No conveyance of the Site shall occur unless Jaquays provides written notice sixty-five (65) calendar days in advance to the State and the United States. The written notice shall

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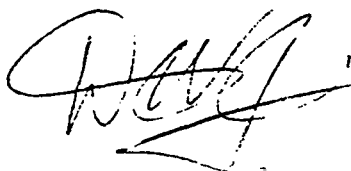
include the intended use of the property by the proposed grantee and a commitment by the proposed grantee to comply with the obligations of this Decree that survive completion of the Work and termination of the Decree. The United States and the State shall review the proposed conveyance and indicate their approval or disapproval within sixty (60) calendar days of receipt of the notice. If either the United States or the State disapproves of the proposed conveyance in writing, the parties will have thirty (30) calendar days from the date of disapproval to resolve the matter. In the event the parties cannot resolve the matter, the procedures of Paragraph 19 (Dispute Resolution) will apply.

12. PERFORMANCE OF WORK

A. Jaquays shall be responsible for completion of the Work, and the maintenance provisions of the Technical Appendix.

B. Jaquays shall place into an escrow account an amount of cash equal to 105% of the agreed contract price for completion of the Work. Such amount shall be held by the escrow agent and used solely for the completion of the Work. The escrow account shall be subject to and governed by a separate Letter of Agreement among the parties to this Decree and the escrow agent, which Letter of Agreement is attached hereto as Exhibit B and incorporated into this Decree by reference.

Jaquays further agrees to require a commercial performance bond as a part of its contract with the contractor which it chooses to complete the Work.

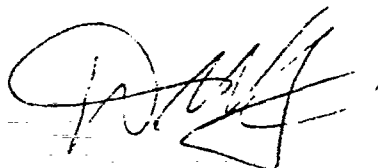
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13. SITE ACCESS

Until the Work required by this Decree is completed, the United States and the State and their authorized representatives shall have access to the Site at all reasonable times in order to observe and monitor the progress of the Work. During and after the completion of the Work, the United States and the State retain their rights of access under any applicable state or federal law. In any event, Jaquays agrees that the United States and the State may inspect the Site at least twice a year after the effective date of this Decree to assess the adequacy of the maintenance activities at the Site.

14. AUTHORITY OF ON-SCENE COORDINATOR

The United States will designate an on-scene coordinator (OSC) to observe and monitor the progress of the Work being performed. The OSC shall have the authority vested by 40 C.F.R. §§300 et seq., including authority to require a cessation of the performance of the Work, any portion thereof or any other related activity at the Site which, in the opinion of the OSC, may or does present or contribute to an endangerment to public health, welfare or the environment, or cause or threaten to cause the release of asbestos from the Site. In the event the OSC does require such cessation of the Work, the OSC then shall have the authority to require Jaquays to perform the Work so as to realize the general scheme and purposes of the Technical Appendix and this Decree and in a manner calculated to avoid or

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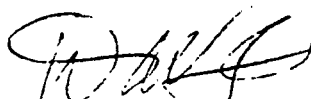
mitigate the endangerment or release. If Jaquays objects to any order requiring cessation of the Work or to any order to perform the Work in accordance with the instructions of the OSC, it may petition the Court to stay or set aside the order of the OSC.

15. COMPLIANCE WITH ALL LAWS

All Work undertaken by Jaquays pursuant to this Decree shall be performed in compliance with all applicable federal and state laws and regulations including but not limited to requirements of the Occupational Safety and Health Administration (OSHA). Jaquays shall be responsible for obtaining all federal, state or local permits or easements which are necessary for the performance of the Work.

16. FORCE MAJEURE

If Jaquays fails to comply in a timely manner with any performance date or other requirement of this Decree and such delay is caused by persons or events beyond the control of Jaquays, such delay shall not be considered a violation of this Decree. When circumstances beyond the control of Jaquays are occurring or have occurred which may delay the completion of the Work, Jaquays shall verbally notify and send written confirmation within five (5) calendar days of the verbal notification to the United States and the State. Written confirmation shall include the reason(s) for and the expected duration of such delay and the measures taken and to be taken by Jaquays to prevent or minimize the delay and the timetable by which those measures will be implemented. Failure to so notify shall constitute a waiver of any claim of force majeure and shall



preclude the availability of any relief provided under this Paragraph.

If Jaquays and the United States and the State agree that a delay is or was beyond the control of Jaquays and agree upon the duration of such delay, the parties shall, with approval of the Court, modify this Decree to the extent necessary to enlarge the schedule for completion of the specific activity affected by such delay and any succeeding activities. If Jaquays and the United States and the State cannot agree that the reason for the delay is or was beyond the control of Jaquays, or upon the duration of such delay, the provisions of Paragraph 19 (Dispute Resolution) shall apply.

It is agreed that a change in the cost of the Work or the cost of compliance with the terms of this Decree shall not constitute events beyond the control of Jaquays within the terms and meaning of this Paragraph.

17. STIPULATED PENALTIES

Subject to the provisions of Paragraph 16 (Force Majeure), Jaquays shall be liable to the United States for stipulated penalties in the amount of Five Hundred Dollars (\$500) for each day of delay in completing properly the Work or for noncompliance with the maintenance provisions of the Technical Appendix and this Decree. If Jaquays is unable to timely complete the Work due to compliance with an order of the OSC pursuant to Paragraph 14 (Authority of On-Scene Coordinator), the penalty provided for in this Paragraph shall not apply.

Penalties for noncompliance with the maintenance provisions of

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the Technical Appendix and of this Decree shall begin to accrue on the tenth day following the occurrence of the condition requiring maintenance, or on the tenth day following notification by the United States or the State that action is required, whichever occurs first. No penalties shall accrue during the lesser of (a) the actual time required for repairs or maintenance or (b) a reasonable time necessary for repairs or maintenance.

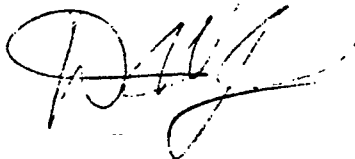
The stipulated penalties provided for in this Paragraph shall survive any termination of this Decree in accordance with Paragraph 27, and after such termination such penalties shall accrue under the same terms and conditions as liquidated damages.

18. COVENANT NOT TO SUE

A. The "Covered Matters" referred to hereinafter include:

1. Liability for the Work, as described in the Technical Appendix, except with respect to the interior of the mill building and its machinery or fixtures and any vehicles stored therein, and the off-site disposal of asbestos waste, if any.

2. Liability for (i) all Response Costs incurred by the Plaintiffs as alleged in the Second Claim of the Complaint, (ii) any costs incurred in connection with the administration of this Decree, specifically excluding any costs incurred by the Plaintiffs in connection with any action they may take in response to a future release or threatened release of asbestos waste at or from the Jaquays Site.

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B. As to the Covered Matters:

1. the United States and the State have performed a visual inspection and examination of the surface of the entire Jaquays Site (except the interior of the mill building) and have marked all the areas containing asbestos that can reasonably be determined to present an imminent and substantial endangerment to public health, welfare, or the environment, which require removal as part of the Work;

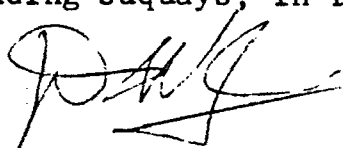
2. Jaquays has agreed to undertake 100% of the Work at the Site, and to assure adequate maintenance of the Site as described in the Technical Appendix.

C. In consideration thereof the Plaintiffs and Jaquays agree that upon completion of the Work to the satisfaction of the United States and the State in accordance with Paragraph 8 (Completion of Work) of the requirements of this Decree, including the Work pursuant to the Technical Appendix but excluding the maintenance requirements, the Plaintiffs shall release Jaquays from any further liability (except for maintenance requirements) for Covered Matters. Plaintiffs agree to refrain from prosecuting

(i) the pending action or

(ii) any other civil or administrative actions arising from Covered Matters against Jaquays so long as Jaquays is in compliance with the terms of this Decree, including the maintenance requirements.

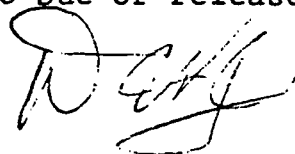
D. Nothing herein shall be construed to limit the authority of the Plaintiffs to undertake any administrative or judicial action against any person, including Jaquays, in response to

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new conditions which may present an imminent and substantial endangerment to the public health, welfare or the environment or in response to a release or threatened release of asbestos wastes resulting from such new conditions.

E. No Covenant-Not-To-Sue or release is given for any release or threat of release of asbestos wastes which may occur or be discovered at any time after the completion of the Work or for any release or threat of release which was not known by the United States or the State as of the effective date of this Decree, unless such release or threat of release results from a condition which existed as of the effective date of this Decree and which Jaquays can establish should reasonably have been discovered by the Plaintiffs in the course of their inspection and examination of the Site as described in Paragraph 18(B)(1) of this Decree. Even in such an event, however, no release or covenant not to sue is given (i) where previously unknown or undetected conditions which may arise or be discovered at the Site at any time may present an imminent and substantial endangerment to public health, welfare or the environment or (ii) where the Plaintiffs receive additional information, which was not available at the time of this Decree, concerning the health effects of levels of exposure to asbestos, toxicity of asbestos, or the appropriateness of the remedy described by this Decree, and this additional information indicates that Site conditions may present an imminent and substantial endangerment to the public health or welfare or the environment.

F. No Covenant-Not-To-Sue or release is given for

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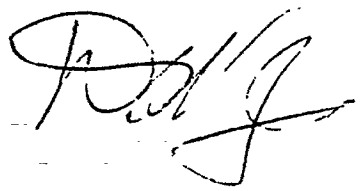
claims by federal agencies other than EPA, including, but not limited to, any claims which may be brought by or on behalf of the Department of the Interior or other federal trustee for damages to natural resources.

G. No Covenant-Not-To-Sue or release is given for future purchasers of the Jaquays Site or other parties holding an interest in the Site in the future.

H. The provisions of this Paragraph 18 will survive termination of this action and Decree and will be perpetual covenants of the parties.

19. DISPUTE RESOLUTION

Any dispute which arises with respect to the meaning, application, interpretation, amendment or modification of this Decree and the Appendix and Exhibits thereto, their terms, any plan or report required thereunder, or with respect to any party's compliance herewith or any delay hereunder (including but not limited to disputes concerning the adequacy of reports or plans for implementing the Technical Appendix and the propriety of any penalty assessed) shall in the first instance be the subject of a thirty-calendar-day period of informal negotiations. The period for negotiations may be extended by mutual agreement among the parties. If the Plaintiffs and Jaquays cannot resolve the dispute within the informal negotiation period, it shall be presented to the Court for appropriate resolution upon written notice.

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It shall be the responsibility of Jaquays to file the documents necessary to notify the Court of the dispute, except where the United States or the State is seeking any stipulated penalty or an amendment, modification or enforcement of this Decree. In those instances, the United States or the State shall have the responsibility of filing the necessary documents. Thereafter, the Court may order the parties to file such pleadings as the Court deems necessary and proper.

Jaquays shall file any petition with the Court within forty-five (45) calendar days, and the United States or the State shall petition the Court within ninety (90) calendar days after the expiration of the informal negotiation period described above.

If any proceeding before the Court under these provisions is decided against Jaquays, the five-year time period provided in Paragraph 27 (Termination of Decree) will be considered tolled for a length of time during which the dispute is pending, but such tolling will not affect portions or aspects of the Work not involved in the dispute.

Nothing herein shall be construed to limit the authority of the Plaintiffs, otherwise existing under law, to respond to any emergency situation which may arise or be discovered at the Site.

20. CLAIMS AGAINST THE GOVERNMENT

For and in consideration of the covenants and promises made herein by the Plaintiffs, Jaquays agrees not to assert

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any claims, demands or causes of action against the United States Environmental Protection Agency, or the Arizona Department of Health Services, their agents, servants, employees, or successor agencies, for actions related to the Subdivision or the Jaquays Site and Jaquays specifically waives any claims for reimbursement from the Hazardous Substances Response Trust Fund, 42 U.S.C. §9631.

21. NOTICES

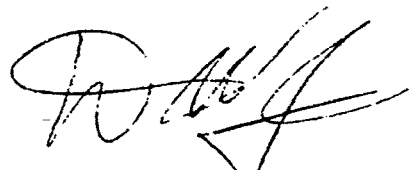
Whenever, under the terms of this Decree, notice is required to be given or a report or other document is required to be forwarded by one party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice in writing to the other parties of another individual designated to receive such communications. Notice to the individuals listed below shall constitute complete satisfaction of any notice requirement of the Decree with respect to the United States, the State and Jaquays.

As to the United States:

Before termination of this Decree:

Saunders M. Bridges, Jr., Esq.
Environmental Enforcement Section
Land and Natural Resources Division
U.S. Department of Justice
10th & Pennsylvania Avenue, N.W.
Washington, D.C. 20530

John Rothman, Esq.
Office of Regional Counsel
U.S. EPA, Region IX
215 Fremont Street
San Francisco, California 94105

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Jerry M. Schwartz, Esq.
Office of Enforcement and Compliance Monitoring
U.S. EPA, Mail Code LE 134S
401 M Street, S.W.
Washington, D.C. 20460

After termination of this Decree:

Director
Toxics and Waste Management Division
U.S. EPA, Region IX
215 Fremont Street
San Francisco, California 94105

As to the State of Arizona:

Before termination of this Decree:

James D. Viereggs, Esq.
Assistant Attorney General
State of Arizona
Environmental Protection Unit
1275 W. Washington
Phoenix, Arizona 85007

Jon Dahl, R.S.
Environmental Engineering Specialist
Compliance Unit
Office of Air Quality Management
Arizona Department of Health Services
2005 N. Central
Phoenix, Arizona 85004

After termination of this Decree:

Assistant Director
Environmental Health Services
Arizona Department of Health Services
2005 N. Central
Phoenix, Arizona 85004

As to Jaquays:

Before termination of this Decree:

Jill H. Grossman, Esq.
Robbins and Green, P.A.
1800 United Bank Building
3300 N. Central
Phoenix, Arizona 85012

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After termination of this Decree:

D.W. Jaquays
132 W. Grenada
Phoenix, Arizona 85003

22. THIRD PARTIES

Nothing contained in this Decree releases or settles any claims for injuries to persons or property, known or unknown, of any private individual or local government entity. It is intended that this Decree shall not affect the rights of persons or entities who are not parties to this Decree to enforce their independent rights or remedies.

23. DISCLAIMER OF AGENCY RELATIONSHIP

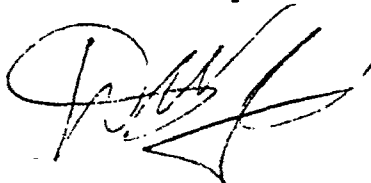
By consenting to this Decree, neither the United States nor the State intends to create any agency relationship between themselves and Jaquays or its contractors. All parties agree that no such relationship is created.

24. RETENTION OF JURISDICTION

Subject to Paragraph 27 (Termination of Decree), the Court shall retain jurisdiction of this matter for the purposes of interpreting, implementing and enforcing the terms and conditions of this Decree and for the purpose of adjudicating all matters of dispute among the parties.

25. MODIFICATION

No modification shall be made in this Consent Decree, including but not limited to a variance from the requirements set forth in the Technical Appendix, without written notification to and written approval of all the parties and the Court.

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The notification required by this paragraph shall set forth the nature of and reasons for the requested modification.

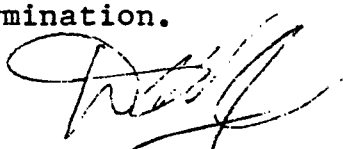
26. ADMISSION OF LIABILITY

Jaquays does not admit any liability or any past or present violation of any federal or state law by virtue of executing this Decree or carrying out its terms. Jaquays denies the allegations contained in the Complaint and in the State's Motion to Intervene including but not limited to the allegation that asbestos fibers from asbestos tailings piles on the Jaquays property become airborne and travel to the Subdivision.

27. TERMINATION OF DECREE

After expiration of a five-year period following the Completion Date, as such period may be extended by tolling pursuant to the terms of this Decree, any party may move the Court for an order terminating the pending Action and dismissing the Complaint, but recognizing that the terms and conditions of this Decree survive its termination and are perpetual covenants which run with and are appurtenant to the Site.

After such notice and hearing as this Court may require, the Court will enter such an order of termination unless the Court finds that Jaquays is not then in compliance with the terms of this Decree. If the Court finds that Jaquays is not in compliance with the terms of this Decree, the Court will enter such orders as are appropriate directing compliance with this Decree, and upon motion of Jaquays after completion of the compliance orders, the Court will enter the order of termination.



28. EFFECT ON OTHER PARTIES TO THIS ACTION

By agreement of the parties and in consideration of the mutual covenants contained within this Decree, the defendant D.W. Jaquays Mining & Contractors Equipment Company is hereby dismissed from this Action. Each of the remaining defendants is the subject of a provision of a separate Decree entered or to be entered in this Action by the Court, and is unaffected by the provisions of this Decree.

BY THEIR COUNSEL, the parties enter into this Consent Decree and submit it to the Court, that it may be approved and entered.

FOR THE UNITED STATES OF AMERICA

_____, 1985

F. HENRY HABICHT II
Assistant Attorney General
Land and Natural Resources Division
U.S. Department of Justice

_____, 1985

SAUNDERS M. BRIDGES, JR.
Trial Attorney
Environmental Enforcement Section
Land and Natural Resources Division
U.S. Department of Justice

April 10, 1985

Courtney M. Price
COURTNEY M. PRICE
Assistant Administrator
Office of Enforcement and Compliance
Monitoring
U.S. Environmental Protection Agency

April 3, 1985

FOR THE STATE OF ARIZONA and the
ARIZONA DEPARTMENT OF HEALTH SERVICES

James D. Viereggs
JAMES D. VIEREGG
Assistant Attorney General
State of Arizona

[Handwritten signature]

FOR THE DEFENDANT JAQUAYS MINING
AND CONTRACTORS EQUIPMENT CO.

April 2, 1985

Jill H. Grossman
JILL H. GROSSMAN
Robbins and Green, P.A.

FOR THE DEFENDANT JAQUAYS MINING
CORPORATION

April 2, 1985

Jill H. Grossman
JILL H. GROSSMAN
Robbins and Green, P.A.

April 2, 1985

Jaquays Mining Corporation
By: [Signature]
D. W. JAQUAYS,
President

[Signature]

EXHIBIT "A"

All and singular those certain pieces and parcels of land situated in Section 5, Township 1 South Range 16 East, G&SRB&M, Gila County, State of Arizona, more particularly described as follows, to-wit:

REGAL MILLSITE Beginning at corner No. 1 of the Regal Millsite, from whence the South common corner of Sections 35 and 36 of Township 1, North Range 15-1/2 East bears N. 33° 49' W. 2430.60 feet; thence S. 37° 33' W. 231.14 feet to corner No. 2; thence S. 69° 03' E. along the North side line of U.S. highway 70, 814.77 feet to Corner No. 3; thence North 20° 57' E. 338.82 feet, to Corner No. 4; thence N. 82° 31' 30" W. 405.15 feet to a point; thence North 82° 22' W. 50.05 feet; thence N. 79° 52' W. 99.54 feet; thence N. 70° 30' W. 100.08 feet; thence N. 63° 51' W. 108.65 feet to Corner No. 1, the point of beginning, containing an area of 4.601 acres; except the following:

Beginning at Corner No. 1 of the Regal Millsite, M.S. No. 4487 Arizona, situate in unsurveyed sec. 5, T.1 S., R.16 E., Gila and Salt River Meridian, Gila County, Arizona; from which the true point for the standard corner of secs. 35 and 36, T.1 N., R.15-1/2 E., Gila and Salt River Meridian bears North 33° 49' West 2,430.60 ft. dist:

thence South 63° 51' East 108.65 ft.; along line 1-4, M.S.
4487 Regal Millsite;

thence South 70° 30' East 45.78 ft.;

thence South 20° 57' West 212.82 ft.; to a point on line 2-3,
M.S. 4487 Regal Millsite;

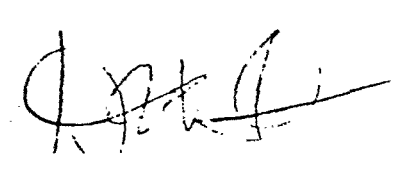
thence North 69° 03' West 220.00 ft.; to Cor. No. 2. M.S.
4487 Regal Millsite;

thence North 37° 33' East 231.14 ft. to the true point of
beginning.

Containing 0.929 acres more or less; and

ASBESTOS KING MILLSITE Beginning at Corner No. 1 of Asbestos King Millsite, from whence the South common corner of Sections 35 and 36 of Township 1, North Range 15-1/2 East, bears N. 43° 53' W. 3020.75 feet; thence S. 20° 57' W. 338.82 feet to Corner No. 2; thence S. 69° 03' E. 527.06 feet, along the North side line of U.S. Highway 70, to Corner No. 3; thence N. 20° 57' E. 443.25 feet to Corner No. 4; thence N. 72° 13' W. 82.12 feet to a point; thence No. 80° 11' 30" W. 152.92 feet; thence N. 82° 27' 30" W. 303.35 feet to Corner No. 1, the point of beginning, containing an area of 4.824 acres; and

HUNTZ MILLSITE Beginning at Corner No. 1 of Huntz Millsite, from whence the South common corner of Sections 35 and 36 of Township 1, North Range 15-1/2 East, bears N. 49° 09' W. 3468.17 feet; thence S. 20° 57' W. 443.25 feet to Corner No. 2; thence S. 69°



03' E. 577.94 feet, along U.S. Highway 70, to Corner No. 3; thence N. $20^{\circ} 57'$ E. 207.71 feet, to Corner No. 4; thence N. $37^{\circ} 17'$ W. 263.95 feet to a point; thence N. $42^{\circ} 05'$ W. 82.46 feet; thence N. $48^{\circ} 50' 30''$ W. 82.74 feet; thence N. $56^{\circ} 36' 30''$ W. 105.36 feet; thence N. $64^{\circ} 29' 30''$ W. 99.78 feet to Corner No. 1, the point of beginning, containing an area of 4.759 acres.

[Handwritten signature]

EXHIBIT B

Escrow Agreement

WHEREAS, the parties hereto, Jaquays Mining Corporation ("Client") and Robbins and Green, P.A., ("Counsel") have negotiated with the United States of America and the State of Arizona a Consent Decree for the settlement of Civil Action No. CIV 83-309 GLO RMB now pending in the United States District Court, District of Arizona; and

WHEREAS, said Decree requires that Client complete certain work, which client has chosen to complete by use of a contractor, at Client's sole expense; and

WHEREAS, said Decree requires that funds equal to 105% of the contract price for the completion of said work be held in escrow pending performance by the contractor;

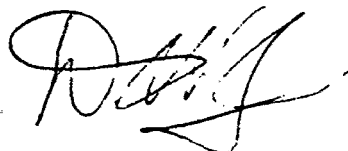
NOW, THEREFORE, in mutual consideration and as a part of the contract and representation agreement between Client and Counsel, the parties hereto agree as follows:

1. Within five (5) days of the effective date of the Consent Decree, Client will deposit with Counsel liquid funds equal to 105% of the agreed contract price for the completion of the work called for by the Consent Decree. Said funds will be held by Counsel in accounts in federally insured financial institutions.

2. Funds will be paid by Counsel to the contractor in accordance with the agreement between Client and contractor, but in no event will more than 80% of the amount deposited be paid out until final completion of the "Work" as described in the Consent Decree.

3. If the funds held by counsel are not sufficient to fulfill the agreement between Client and the contractor, or to complete the work in accordance with the Consent Decree, it shall be the sole obligation of Client to provide such additional funds as may be necessary. If funds remain in escrow after such completion, such funds shall be returned by Counsel to Client.

4. This agreement is made between the parties for their mutual benefit as well as for the benefit of the parties of the Consent Decree.

A handwritten signature, likely of a representative of the Client or Counsel, is written in dark ink at the bottom center of the page.

Signed and dated at Phoenix, Arizona, this 1st
day of April, 1985.

Jaquays Mining Corporation,
Client

By:

[Signature]
D.W. Jaquays,
President

Robbins and Green, P.A.
Counsel

By:

[Signature]

[Signature]

EXHIBIT C

[Three-part drawings by HBH (oversized) to be filed separately]

WHL

SECTION 0100 - GENERAL REQUIREMENTS

0101. SUMMARY of WORK

The project consists of all earthwork, grading, and resurfacing necessary for the removal and containment of asbestos material and asbestos contaminated soil on and near the Jaquays Asbestos Mill Site in Section 5, Township 1 S., Range 16 E., Gila County, Arizona (refer to the Vicinity and Location Maps in the Exhibit Section).

The approximate volumes of earthwork are indicated below.
cu. yds.

- A. Excavation to stockpile
 - 1. Contaminated soil over burial trench..... 787
 - 2. Clean fill from burial trench..... 27,292
- B. Excavation to be buried
 - 1. Contaminated soil stockpile (A-1)..... 787
 - 2. Yard area topsoil..... 5,469
 - 3. Pile B (Asbestos)..... 12,046
 - 4. Pile C (Asbestos)..... 3,769
 - 5. Bunker soil..... 710
 - 6. Railroad siding & Right of Way topsoil... 295
- C. Backfill from clean soil stockpile
 - 1. Burial trench cover - 5'..... 7,735
 - 2. Yard area topsoil replacement..... 5,797
 - 3. Bunker soil replacement..... 710
 - 4. Railroad siding & R/W topsoil replacement 468

TOTAL YARDAGE.. 65,865

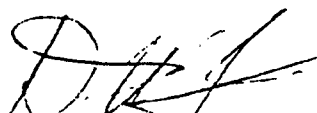
Additional related work will or may include fence removal and replacement.

0103. SPECIAL PROJECT PROCEDURES

The objective of the project is to eliminate the spread of asbestos contamination by removing and burying the existing contaminated material. The following special procedures will be observed during construction in order to achieve this objective.

.1 Personal Safety

.1a Authorized Persons - No personnel other than the Jaquays Company staff, EPA and Arizona Department of Health Services staff, designated observers, and contractors employed by any of the parties to this decree shall be allowed within the fence which begins at the west end of the mill building and surrounds the site.



.1b Personnel decontamination areas will be designated within the fenced area and supplied with all necessary items prior to commencement of work on site. The contractor/owner shall provide a facility divided into at least three distinct areas: Clean changing room, shower, contaminated changing room. All personnel entering the site shall enter into the clean area to remove and store their street clothing and receive clean respiratory equipment and clothing prior to beginning work on site. Personnel passing from the clean area into the contaminated area shall be required to wear special work clothing and protective gear (items 0103.1c and 0103.1d). Upon leaving the work area all personnel will remove contaminated clothing and store it in a separate area from clean street clothing. After showering, personnel may proceed to the area where their street clothing is stored and dress. Clean and contaminated clothing shall not be stored in the same area.

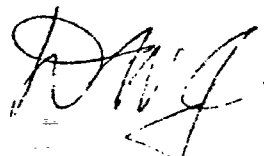
.1c Work Clothing - The objective of requiring separate work area clothing is to prevent the inadvertent transport of asbestos particles outside of the contaminated area. This requirement can be met by issuing all authorized persons protective coveralls of a sturdy fabric, plastic or rubber shoe covers or boots, and head covering.

.1d Protective Gear - All personnel should be required to wear OSHA-approved dust masks or respirators while present for worker and equipment operator safety.

.1e All design aspects of the trench/pit shall conform to state and federal construction regulations and codes for worker and equipment operator safety.

.1f Personal wash and toilet facilities shall be provided for authorized persons to wash face and hands before eating or drinking, and to shower before leaving the Site. These facilities shall be cleaned on a daily basis to minimize personnel exposures and recontamination.

.1g All work clothing used in the contaminated area shall be disposed of on-site or collected in plastic bags, sealed during transport and laundered separately from uncontaminated clothing. It is recommended that the clothing be cycled through the washing machine twice and then line-dried to eliminate contamination of clothes dryer. The washing machine should then be run empty through one additional cycle to clean it.

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2. Equipment Use and Decontamination

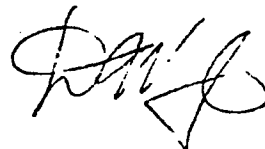
.2a Prior to commencement of work the contractor shall construct an area to decontaminate all equipment, materials, tools, etc. This area shall be large enough to accommodate the largest piece of equipment used on site plus area to allow worker access during cleaning. The contractor shall excavate a pit at least 1 foot deep at both ends and 2 feet deep at the center. The pit area shall be lined with three layers of 10 mil plastic with a minimum of 3 inches of sand on top of the liner. The remaining decontamination pit area and adjacent walking areas are to be filled with #3 crushed rock. The area shall have drainage sufficient to collect wash-water and debris from cleaning the equipment. At the close of operations to consolidate contaminated material in the burial pit, the contractor shall remove the soil and gravel from the decontamination area and dispose of it into the burial pit. Clean fill shall be placed over the area to pre-existing grades after the contaminated soil has been removed.

.2b During and after the construction phase, no equipment shall be removed from the designated contaminated area without being thoroughly washed down to remove asbestos soil and dust. All equipment, tools, etc. shall receive a high pressure steam cleaning prior to removal from the site, maintenance, or repair. Air cleaners shall be cleaned and air filters replaced prior to removal from site.

.2c All resulting water and sediment from both the personnel wash areas and the equipment wash areas shall be collected in a sump constructed by the contractor. This contaminated material will install piping from the decontamination wash pit and personnel wash areas to the sump to convey the wash water.

.2d The soil and tailings within the contaminated area shall be thoroughly soaked with water or dust suppressant prior to any activity upon it. During work activities the work areas shall be kept wet to prevent emissions.

.2e The types of equipment used by the contractor shall be approved by the Engineer and shall be those which generate the minimal dust. NO ELEVATING SELF LOADING ("PADDLE WHEEL") SCRAPERS WILL BE USED. The proposed procedures and sequence of work shall be those which generate minimal dust.



.2f The order of work within the contaminated area will be designed such that equipment does not have to pass from contaminated areas to uncontaminated areas. The contractor shall modify his work sequence or procedures as directed by the owner or OSC to ensure compliance with the objectives of the consent decree and the contract requirements (refer to 222.0e).

.2g At the end of each working day, a sprinkler system shall be reactivated over remaining tailing piles and the final trench/pit so that the material does not dry out overnight. If the work must be halted for several days, the sprinkler system(s) must be used to keep the material wet for the entire time the work is halted.

.2h There should be no run-off or erosion water allowed to go outside the boundaries of the contaminated area in order to avoid asbestos transport outside this area. All areas where run-off does occur shall be cleaned up to remove asbestos contamination.

.2i A water spray truck shall be operated on any haul/access roads used during construction to control dust emissions.

.2j Additional nighttime surveillance by the local law enforcement personnel will be requested in order to restrict entry, protect dust control equipment (hoses, piping, sprinklers, etc.) from vandalism and to alert responsible personnel of operational problems.

.2k No unauthorized machinery or vehicles should be permitted within the work area bounded on the west by the fence ending at the mill building. Personal vehicles should be parked outside of this fenced area in the parking lot.

0115 MEASUREMENT and PAYMENT

Payments will be made per unit and lump sum prices on the Contractor's bid. Quantities over or under the estimated amounts will be paid at the bid schedule unit prices. Actual quantities will be calculated from field surveys of rough and finish grades.

0166 TESTING, COMPLIANCE, and FAILURE INITIAL

Soil compaction testing will be done at owner's expense. If, under test, a portion of the work shall fail to fulfill



the contract requirements and be adjusted, altered, renewed or replaced, tests on that portion when so adjusted, altered, removed, or replaced, together with other portions of the work as are affected thereby, shall be repeated within reasonable times and in accordance with the specified conditions. The Contractor shall pay to the owner reasonable expenses incurred by the owner as a result of the repeating such tests.

SECTION 0200 - SITEWORK

0222.0 EXCAVATION

.0a Burial Pit - The contractor will remove the top 0.5 feet of soil from designated burial pit area and stockpile it in the designated contaminated soil stockpile area. The contractor will then excavate and stockpile the top 0.5 feet of contaminated soil from the haul road to Pit A. Pit A will be the stockpile area for clean material from the burial pit. The contractor will then excavate the burial pit to a depth of approximately 23 feet maintaining the side slope as of approximately 1.5:1 as staked by the Engineer. The clean excavated burial pit material is that material which lies 0.5 feet below the surface. It will be stockpiled in Pit A such that it can be used later for backfill material in the burial pit yard and bunker areas. The contractor will provide drainage protection around the burial pit per section 0240 - Drainage.

.0b Pile B, Pile C and Burial Pit Stockpile - Upon completion of the burial pit excavation and stockpiling, the contractor will begin excavation of the contaminated material from the pit topsoil, Pile B and Pile C, and place it in the burial pit. The pit topsoil stockpile (contaminated) will be removed to 6 inches below natural grade. The asbestos tailings in Pile B and Pile C will be removed to 6 inches below the level of asbestos contamination. It is anticipated that the natural grade of the ground under each pile will be the the extent of asbestos contamination. When the contractor reaches the natural grade or what appears to be native soil, he will notify the Engineer before excavating below the grade. After it has been determined whether further asbestos contamination exists or not, the contractor will be instructed to proceed with the remaining excavation.

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.Oc Explosives Bunker - The explosives bunker previously on the property has been removed. The soil which covered the explosives bunker prior to its removal and the concrete foundation which was under the explosives bunker remain at the explosives bunker location.

The soil which covered the explosives bunker and the top 6 inches of native soil around the explosives bunker location will be removed and disposed of in the burial pit. The concrete foundation will remain and will be covered with clean fill.

.Od Railroad Right-of-Way Area - Two contaminated areas north of and near the mill property lie in the railroad right-of-way. A small area north of the parking lot will be excavated to a depth of 4 inches. The railroad siding area will require the removal of the top 4 inches of contaminated soil. This entails hand shovel work along the railroad track of the siding to remove the contaminated soil between the railroad ties.

.Oe Contaminated Yard Area - Upon completion of burial of all other contaminated areas at the project, the contractor shall excavate the contaminated material from the yard area. He shall commence removal at the furthest points of the yard and proceed towards the burial pit area. The contaminated soil in the yard area shall be removed to a minimum depth of 6 inches below the existing grade.

.Of The contractor shall wash all equipment prior to placing the clean fill.

.Og It is recognized that due to spillage and mechanical migration the exact boundaries of the piles may vary slightly as work progresses and the area of contamination becomes more visible. Pile C, for example, appears to have spread both toward the railroad right-of-way and toward the wash, as well as over the top of the culvert. These areas must be removed as part of the removal of Pile C.

.Oh There exist on site certain small areas of surface contamination, in addition to the major areas of contamination described herein. Most of these small areas have been marked during an inspection conducted by A.D.H.S. Prior to the start of the work, U.S. EPA will conduct an on-site inspection which may reveal additional small spots of minor surface contamination, which will be marked. Any such spots will be removed. It is anticipated that such additional spots can be removed by hand shovel and transported by bucket or wheelbarrow.



0222.10 BACKFILL

.1a Burial Pit - The contractor will maintain the material placed in the burial pit at + 3 percent of optimum moisture as determined by the Engineer. The fill will be placed in layers of no more than 6 inches in thickness. Pneumatic rollers shall be used to obtain compaction as near 90% as possible. The top 5 feet of the burial pit will be filled with clean fill from the stockpile. The contractor will insure that the top of the contaminated soil does not encroach into the clean fill zone of the pit. The work sequence on site should consist of the most heavily contaminated soil at the bottom of the pit and the least contaminated soil at the top of the pit directly under the line and backfill material. Upon completion of the contaminated material excavation and backfill, the contractor will place a 10 mil (millimeter) thick polyvinylchloride (PVC) liner over the material prior to placement of the clean fill. The liner shall be overlapped 6 inches at all joint locations. The clean fill from the stockpile will be placed over the PVC liner up to 1 foot above the natural grade as determined by the Engineer (5 feet minimum fill). Three inches of a clean, well-graded gravel, 100% passing through a 2 inch sieve, and no more than 5% passing through a No. 200 sieve, will be placed over the 5 feet of clean fill.

.1b Bunker - Deleted (see paragraph .0c).

.1c Yard Area - Clean fill will be used to replace the 6 inches of material excavation from the yard, under Pile B and Pile C, and the wash. Natural grades will be re-established as near as possible and as staked by the Engineer. Moisture control and equipment routing will be maintained as per section 0.222.1a.

.1d Railroad R/W Area - Clean fill will be used to replace the excavated material in the railroad Right-of-Way area. Moisture control and equipment routing will be maintained as per section 0.222.1a. The areas between the railroad ties will be filled to top of the ties. Compaction of 95% will be required as determined by modified proctor method, (lab-ASTM D1557, field test [sand-cone] ASTM D1556, field test [nuclear] ASTM D3017).

0222.2 GRADING

Site grading shall be \pm 0.1 foot of natural grade as determined by the Engineer. Embankment grades along the wash and the bunker will be \pm 0.50 foot of previous existing grades.

0240 DRAINAGE

.1 The contractor will provide an adequate berm around the burial pit to keep runoff from surrounding areas from inadvertently entering the pit. The berm will be constructed over an area from which the contaminated soil has been removed. Clean fill will be used to build the berm. Prior to completion of clean backfill of the burial pit, the berm will be removed. It may be used as part of the clean backfill for burial pit.

.2 After the burial pit is completed a diversion ditch shall be constructed around the perimeter of the pit to ensure surface water does not run across the pit area.

0244.1 SPRINKLER SYSTEM

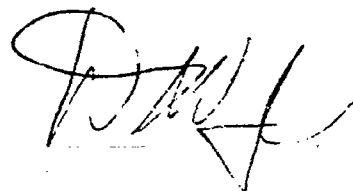
The contractor will furnish all plant and materials necessary to maintain adequate control of the contaminated material as per sections 103.2g, 103.2h, and 103.2i. During the excavation of the contaminated material, no visible dust is allowed. Water is available at the millsite. Contractor will insure supply is adequate to maintain control measures.

0244.4 FENCING

Removal and replacement of several sections of existing barbed wire fence will be required. Estimated footage is shown in bid schedule.

0250 PAVING AND RESURFACING

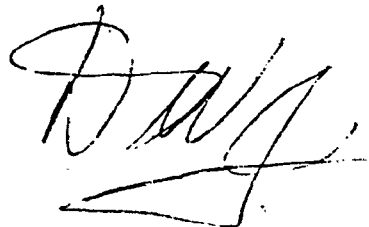
.1a Parking lot - The parking lot area as shown on sheet 1 Exhibit C-1 will be coated with a bituminous prime coat as per current MAG specifications Section 333.

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.1b Existing yard haul roads will be re-established along previous alignment and grade. They will be re-surfaced with clean fill, rock or other granular surfacing material.

MAINTENANCE REQUIREMENTS AND STANDARDS

1. Jaquays shall inspect the trench/pit area at least once every three months and following each major rain-storm (defined as any storm which measures one inch or greater in a twenty four hour period).
2. The inspection shall include the following:
 - a. Walking of the perimeter fence, note any breaks in the fence.
 - b. Observe the trench/pit areas, note any areas where the gravel cover has eroded, areas where there are significant depressions or elevations from the "as built" land plot, or any other changes in the appearance of the area which might signify a break in the cover.
3. A written report shall be prepared noting any of the above or concluding that no changes have occurred. This report shall be kept on file by the Jaquays company.
4. Corrective action shall be required when:
 - a. The gravel cover has completely eroded off any area, and/or
 - b. When a depression, elevation or erosion channel of six inches has been observed.
 - c. There has been a break in the fence.
5. Corrective action shall include repair of noted damage and correction of the cause of the damage.

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